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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1977

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**No. 77-1427**

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NEW YORK CITY TRANSIT AUTHORITY, *et al.*  
*Petitioners.*

v

CARL BEAZER, *et al.*  
*Respondents*

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**On Writ of Certiorari to the  
United States Court of Appeals for the  
Second Circuit**

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**BRIEF OF THE NATIONAL ASSOCIATION OF STATE  
ALCOHOL AND DRUG ABUSE DIRECTORS  
AS AMICUS CURIAE**

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AS AMICUS CURIAE**

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BRIEF OF THE NATIONAL ASSOCIATION OF STATE  
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**QUESTIONS PRESENTED**

1. Is the New York City Transit Authority's policy of total exclusion from employment of all former heroin addicts participating in, or successfully completing, methadone maintenance treatment programs an unconstitutional denial of due process or equal protection under the Fourteenth Amendment?

2. Is the New York City Transit Authority's policy of total exclusion from employment of all former heroin addicts participating in, or successfully completing, methadone maintenance treatment programs an unlawful racial discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*?

### **INTEREST OF THE NATIONAL ASSOCIATION OF STATE ALCOHOL AND DRUG ABUSE DIRECTORS**

The National Association of State Alcohol and Drug Abuse Directors (NASADAD) is a non-profit corporation of the District of Columbia whose membership consists of the State alcoholism and drug abuse prevention authorities of the several States and territories, as designated under Public Laws 91-616 (42 U.S.C. § 4551 *et seq.*) and 92-255 (21 U.S.C. § 1101 *et seq.*), respectively, as amended. The purposes of the corporation are to foster the development of a comprehensive alcohol and drug abuse program capability in each State; to facilitate the evaluation, dissemination, and interstate exchange of alcohol and drug abuse information and program activities among the State program administrators; to assist the Federal and State governments in the design and development and implementation of coordinated, cooperative Federal-State programs; to encourage the Federal government to engage with the States in the comprehensive planning and utilization of government resources at all levels; to identify common interests and differences among the States in the nature of their alcohol and drug problems and to assist in the design of

programs tailored to local characteristics; and to identify problems and issues that require study and research, as well as to conduct evaluation activities upon the request of State alcohol or drug abuse coordinators.

The responsibilities of the corporation's individual members include the planning, development, and support of comprehensive treatment and rehabilitation programs to reduce the effects of drug addiction and abuse. The objectives of such programs, and thus of the State authorities concerned with them, are to aid individuals in ridding themselves of drug addiction and abuse problems and becoming contributing members of society. An important element in habilitating or rehabilitating such individuals is the removal of obstacles to employment in jobs for which those individuals are qualified. Some obstacles are personal to the patient, e.g., poor attitudes, lack of self-confidence, or lack of marketable skills, which the programs deal with directly. Others are institutional, such as exclusionary policies of employers and misunderstandings of the nature of drug addiction and abuse and former drug addicts and abusers, toward which the State authorities as well as the programs direct their attention.

Exclusionary policies are widespread throughout the nation and are followed by some public employers and some private employers in many States. The arbitrary exclusion of former drug addicts or abusers, including persons still in treatment who have ceased illegal use of drugs, has limited the effectiveness of



treatment and rehabilitation efforts, and therefore limited the effectiveness of individual members of NASADAD in carrying out the statutory and administrative mandates of their positions in State government. Affirmance of the decisions below will aid the NASADAD members individually and collectively by expanding employment opportunities for former addicts both directly, by establishing legal precedent binding upon public employers subject to the Fourteenth Amendment, and indirectly, by encouraging private employers to hire qualified former addicts.

The interest of NASADAD in the present case is limited to the public policy impact of the case, and does not extend to the private interests of the parties. Therefore, inasmuch as the Title VII claim was admittedly pressed for the sole purpose of allowance of attorney's fees, this brief *amicus curiae* will discuss only the constitutional question presented.

### STATEMENT OF THE CASE

This is a class action commenced under 42 U.S.C. §§ 1981 and 1983, the Fourteenth Amendment, and Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) against the New York City Transit Authority (TA), the Manhattan and Bronx Surface Transit Operating Authority (MABSTOA), and certain officials of those governmental instrumentalities. Other initial defendants were excluded by the District Court judgment from liability for the relief granted. The class represented by the four named plaintiffs - respondents

are all former heroin addicts who are participating in or have completed a methadone maintenance treatment program who have been, or would in the future be, subject to dismissal or rejection for employment by the defendants - petitioners.

The suit challenges, as an unconstitutional violation of the due process and equal protection clauses of the Fourteenth Amendment, the policy of the defendants - petitioners to exclude from employment in any position persons who are receiving methadone maintenance treatment or who have successfully concluded such treatment.

The four named plaintiffs include two former employees of the TA, both of whom used heroin at the times they were hired by the TA, who were discharged after the TA learned that they were participants in methadone maintenance treatment programs. The other named plaintiffs were applicants for employment who were rejected by the MABSTOA and the TA because they were former and current methadone maintenance treatment participants, respectively.

The District Court for the Southern District of New York heard fifteen days of testimony and received other evidence in an exhaustive effort to examine the factual issues presented. Expert witnesses gave evidence of the effects of methadone used for treatment of heroin addiction, described in detail the operations and experiences of the major methadone maintenance programs in New York City, and presented data on employment and employability of methadone

maintenance patients; major employers who had experience with methadone maintained employees also testified regarding the work performance of those employees.

The District Court entered an opinion on August 6, 1975 (399 F. Supp. 1032) containing extensive findings of fact and holding that the Transit Authority's blanket exclusion of present and former methadone maintenance patients violated the due process and equal protection clauses of the Fourteenth Amendment, thus entitling the plaintiffs - respondents to relief under that Amendment and under 42 U.S.C. § 1983. The defendants - petitioners were directed to consider each methadone maintained employee or applicant for employment according to his individual merits and the position held or sought.

The TA was directed to reexamine the employability of the named plaintiffs - respondents and report back to the Court for determination of reinstatement and back pay rights. Subsequently the Court ordered two of the named plaintiffs - respondents employed with back pay, but denied relief to two named plaintiffs - respondents and one applying member of the class. The Court found it unnecessary to reach the issue of the alleged violation of Title VII of the Civil Rights Act of 1964 in view of its holding on the issue of constitutionality.

In a Supplemental Opinion entered May 5, 1976, the Court held that the defendants - petitioners were guilty of discrimination in violation of Title VII, upon a

renewed application of the plaintiffs - respondents. The sole purpose of the application was to obtain the benefit of the Title VII provision authorizing the award of a reasonable attorney's fee to the prevailing party. The final order of the District Court permanently enjoined the defendants - petitioners from enforcing the blanket exclusionary policy and awarded attorney's fees to the plaintiffs - respondents.

On appeal, the United States Court of Appeals for the Second Circuit entered an opinion on June 22, 1977 (558 F.2d 97) affirming the judgment of the District Court, except reversing as to the denial of relief to the three plaintiffs - respondents and reducing the amount of the award of attorney's fees.

On June 28, 1978, the Supreme Court of the United States granted the defendants - petitioners' Petition for a Writ of Certiorari, limiting the Court's review to the two issues heretofore stated as Questions Presented.

## SUMMARY OF ARGUMENT

The blanket exclusionary policy of the defendants - petitioners barring employment in any position of former heroin addicts who are participating in, or have successfully completed, a methadone maintenance treatment program has no rational relationship to the legitimate interests of the defendants - petitioners. Applying established constitutional doctrines, the trial court correctly held the blanket exclusion to be in violation of the due process and equal protection clauses of the Fourteenth Amendment.

Studies of many methadone maintained patients over long periods have shown them to be indistinguishable from similar persons in the general population who have not used narcotic drugs. Consideration of such persons on an individual basis, matching their qualifications with the requirements of specific occupations or positions, would reveal many to be employable.

The policy of the Federal government since at least 1972, when major efforts to increase treatment and rehabilitation of drug addicts and abusers began, has been to increase employment opportunities for former addicts. This policy, expressed by both the legislative and executive branches, increases the effectiveness of treatment and rehabilitation efforts to return the former addict to productivity and social acceptability.

### ARGUMENT

- I. The Courts below correctly applied the "rational relationship" test in determining that the Transit Authority's blanket exclusionary policy toward methadone maintained employees violates the Fourteenth Amendment.

In its opinion, the District Court succinctly stated the constitutional doctrine applicable to the present case, "A public entity such as the Transit Authority cannot bar persons from employment on the basis of criteria which have *no rational relation* to the demands of the jobs to be performed. To do so is a violation of both the due process and equal protection clauses of the

Fourteenth Amendment. This applies to new applicants for employment, and to existing employees threatened with termination." 399 F. Supp. at 1057. (Emphasis added.) Applying these principles to factual findings amply supported in the record, the trial court said, "It is perfectly clear that there are substantial numbers of present or past methadone maintained persons who would be capable of performing many of the jobs at the TA. Individual consideration, or narrower rules rationally related to certain classifications of jobs, are constitutionally required. The *lack of a reasonable basis* for the present policy of the TA is particularly evident from the markedly different treatment given to problem drinkers—persons presenting greater risks than those members of the plaintiff class for whom employment is sought." 399 F. Supp. at 1058. (Emphasis added.)

In *Sugarman v. Dougall*, 413 U.S. 634 (1973), the Court held that a similar blanket policy banning aliens from a class of public employment was a violation of the equal protection clause. While carefully pointing out that "on the basis of an individual determination" an alien may be denied public employment if the refusal to hire, or the discharge is based on "legitimate state interests that relate to the qualifications for a particular position or to the characteristics of the employee." 413 U.S. at 647. Only the "flat ban . . . in positions that have little, if any relation to a State's legitimate interest," was unconstitutional. 413 U.S. at 647. Even where a specific occupation is the subject of legitimate State interest, the Fourteenth Amendment requires that "any qualification must have a rational connection with the applicant's fitness or capacity" for the activity. *Schwartz v. Board of Bar Examiners*, 353 U.S. 232 at 239 (1957).



The due process clause of the Fourteenth Amendment also requires that blanket policies or rules based on conclusive presumptions of physical inadequacy be held unconstitutional. In *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974), the Court considered rules requiring all pregnant teachers to take extended leaves of absence beginning in the fourth or fifth month of pregnancy, and held, at page 651, that "...the mandatory termination provisions of the...maternity regulations violate the Due Process Clause of the Fourteenth Amendment, because of their use of unwarranted conclusive presumptions that seriously burden the exercise of protected constitutional liberty."

As found by the trial court (399 F. Supp. at 1049), the Transit Authority has no blanket prohibition against employment of persons with criminal records, persons taking drugs such as tranquilizers, persons formerly confined to mental institutions, persons being treated by a psychiatrist, or persons with medical problems such as diabetes, epilepsy, or heart disease. In each of these conditions individual consideration is given to the applicant or employee. Only in the case of former heroin addicts, particularly those participating, or who have completed participation, in methadone maintenance treatment programs does the TA deem it necessary to exclude all such persons.

The Transit Authority seeks to justify the relationship between its policy and a legitimate concern for public safety by three major assertions: (1) a methadone maintenance patient embodies the underlying character defects which caused him to turn

to heroin in the first place, so there is a substantial risk that such person will revert to heroin or turn to other drugs or alcohol abuse; (2) there are significant adverse physiological effects from methadone which would impair the performance of a methadone maintenance patient as an employee; and (3) there is no satisfactory way of screening the reliable methadone patient from the unreliable, so a blanket exclusionary policy is administratively necessary. 399 F. Supp. at 1036. The trial court found that these assertions were contrary to the overwhelming weight of the evidence presented and summarized its factual findings,

"...the crucial point made so strongly by plaintiffs' witnesses was never convincingly challenged—that methadone as administered in the maintenance programs can successfully erase the physical effects of heroin addiction and permit a former heroin addict to function normally both mentally and physically... It is further clear that the employable can be identified by a prospective employer by essentially the same type of procedures used to identify other persons who would make good and reliable employees." 399 F. Supp. at 1037.

The defendants - petitioners now seek to apply the standard of equal protection adopted by the Court in *Lindsley v. National Carbonic Gas Co.*, 220 U.S. 61 (1911), emphasizing, "A classification having some reasonable basis does not offend against (the equal protection) clause merely because it is not made with

mathematical nicety or because in practice it results in some inequality." But even if this standard is used, this case does not present a question of "mathematical nicety," but rather an assumption that all present or former methadone maintenance patients are alike, and that their characteristics differ significantly from persons with mental illness, diabetes, epilepsy, heart disease, or alcoholism. Such an assumption is unsupported and unsupportable.

**II. Former heroin addicts, including those participating in methadone maintenance programs are employable in a variety of occupations.**

Studies of work performance, psychomotor ability, intelligence, skill retention, and attitudes have concluded that former heroin addicts, including persons being maintained on stable doses of methadone, have characteristics similar to persons of similar background in the population at large. Indeed, a substantial number of drug addicts or abusers are employed while using illicit drugs. Reports to the National Institute on Drug Abuse, Department of Health, Education and Welfare, of 24,500 heroin users admitted to Federally assisted treatment programs in January to March, 1978 show that 27% were employed at the time of admission. Division of Scientific and Program Information, *NIDA Statistical Series, Quarterly Report, Provisional Data, January-March 1978*, Series D, No. 6; Rockville, Md., 1978.

Leading studies by Dr. Norman B. Gordon have demonstrated psychomotor performance, intellectual functioning, and reaction time of methadone maintenance program participants to be equivalent to that of the general population. Gordon, Warner, and Henderson, *Psychomotor and Intellectual Performance Under Methadone Maintenance* Reported to the Committee on Drug Dependence, National Academy of Sciences, National Research Council, 1967. Gordon and Appel, "Performance Effectiveness in Relation to Methadone Maintenance" in *Proceedings, Fourth National Conference on Methadone Treatment*; New York, N.Y., 1972. Driving ability of methadone maintenance patients showed no significant deficiency in a study initiated by the National Highway Traffic Safety Administration. Dunlap and Associates, Inc., *Drug Abuse and Driving Performance, Final Report*; National Highway Traffic Safety Administration, Washington, D.C., 1972.

Testimony in the present case by physicians with extensive experience in methadone programs was summarized in the opinion of the trial court. Dr. Paul Cushman, Jr., Director of the Methadone Maintenance Clinic of St. Luke's Hospital, testified that methadone maintenance patients are basically indistinguishable from comparable non-drug users. Dr. Joyce Lowinson, Director of the Methadone Maintenance Program at Bronx State Hospital, testified that patients stabilized on methadone function normally and cannot be distinguished from persons not taking methadone, except by urine or blood tests. 399 F. Supp. at 1043-44.

To contend that all former heroin addicts, or all methadone maintained former addicts, are employable would be as wrong as the contention of the Transit Authority that none are employable. The point is that former heroin addicts, with or without methadone, differ from each other just as persons in the general population, or persons with other illnesses or disabilities, do. Some have skills, some do not; some are reliable, some are not; some are more intelligent than others; some are employable, some are not. A blanket policy of exclusion, such as that of the Transit Authority, fails to take this individuality into account and arbitrarily places all such persons in a single class, contrary to fact.

**III. Federal policy has consistently stressed the importance of employment opportunity to fulfilling the goals of treatment and rehabilitation of drug addicts and abusers.**

The rapid growth of narcotic addiction and drug abuse and the attendant social ills of increased anti-social behavior and decreased productive self-support in the late 1960s and into the 1970s prompted responses by both the legislative and executive branches of the Federal government. The major step toward Federal action to reduce the demand for illicit drugs was the enactment of the Drug Abuse Office and Treatment Act of 1972, P.L. 92-255 (86 Stat. 65 *et seq.*). The Congress, in Section 102 declared the national policy and purpose of the Act to be "to focus the comprehensive resources of the Federal Government and bring them to bear on drug abuse... and to

develop a comprehensive, coordinated long-term Federal strategy to combat drug abuse."

As part of this comprehensive effort, Section 413 of the Act provided,

"(a) The Civil Service Commission shall be responsible for developing and maintaining, in cooperation with the Director and with other Federal agencies and departments, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among Federal civilian employees. Such policies and services shall make optimal use of existing governmental facilities, services, and skills.

(b) The Director shall foster similar drug abuse prevention, treatment, and rehabilitation programs and services in State and local governments and in private industry.

(c)(1) No person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the ground of prior drug abuse."

An exception for certain security-sensitive agencies and other sensitive positions was included in the section; it was also made clear that employees unable to function properly could be dismissed. Urging adoption by the Senate of the Conference Committee Report including this provision, Senator Harold Hughes pointed out that it treated drug dependent persons the same as other persons with serious health problems. *Congressional Record*, March 17, 1972, page S 4154.



Subsequent to enactment of P.L. 92-255, expressions of policy direction have been made at least annually. In 1973, the Second Report of the National Commission on Marihuana and Drug Abuse concluded, "The Commission recommends that industry consider alternatives to termination of employment for employees involved with drugs. Where the nature of the business allows, employees should be referred to company-run or other public and private rehabilitation or counseling programs... The Commission recommends that the business community not reject an applicant solely on the basis of prior drug use or dependence, unless the nature of the business compels doing so." National Commission on Marihuana and Drug Abuse, *Drug Use in America: Problem in Perspective*, 386-87; Washington, D.C., 1973; G.P.O. No. 5266-00003.

Other policy pronouncements include the following:

"Alternatives to drug use are important not only in the context of prevention; meaningful alternatives to a drug using life style are also important when the ex-drug abuser is attempting to adopt a useful role in society. Of particular importance is the availability of worthwhile employment. However, there are barriers to ex-drug abusers obtaining jobs... Without the cooperation of private employers, no solution to drug abuse problems is possible. The goal is not to convince employers to give ex-drug abusers priority over others, but merely to give them equal consideration unclouded by fixed beliefs so that they can move back into the

mainstream of society." Strategy Council on Drug Abuse, *Federal Strategy for Drug Abuse and Drug Traffic Prevention 1973*, 67-68; Washington, D.C., 1973; G.P.O. No. 5203-00001.

"If Federal, State, and local drug abuse treatment services are to be more than temporary holding operations, they must assure that their clients can have access to a range of rehabilitation alternatives, including basic education opportunities, vocational counseling, skills training and job placement." Strategy Council on Drug Abuse, *Federal Strategy for Drug Abuse and Drug Traffic Prevention 1974*, 26; Washington, D.C., 1974; G.P.O. No. 4110-00014.

"Vocational rehabilitation is a critical part of the treatment process, since society's objective of altering the drug-using lifestyle of a former addict is clearly linked to his ability to find and hold a job. A job not only enables one to be self-supporting, it enhances the dignity and self-reliance that people need to be responsible members of society." Domestic Council Drug Abuse Task Force, *White Paper on Drug Abuse*, 77; Washington, D.C., 1975; G.P.O. No. 041-010-00027-4.

"Because employment and related training and job development activities are essential to the rehabilitation of the drug involved offender, and current services lacking, we must establish ways of improving drug offenders' employability and employment opportunities. Over the next six months, the cabinet Committee on Drug Abuse Prevention, Treatment and

Rehabilitation will undertake to ensure that drug abusers will not be denied access to existing Federal manpower or rehabilitation programs. Specific activities will be directed at reviewing guidelines, regulations and plans for vocational rehabilitation and employment programs at both Federal and State levels; developing cooperative activities and projects in these areas; and developing a strategy for greater involvement of the private sector in employment programs." Strategy Council on Drug Abuse, *Federal Strategy for Drug Abuse and Drug Traffic Prevention* 1976 44-45; Washington, D.C., 1976; G.P.O. No. 052-003-00251-5.

"To improve the quality of Federal drug treatment, I am recommending these steps:

- To help drug abusers return to productive lives, I am directing the Secretary of Labor to identify all Federal employment assistance programs which can help former drug abusers and to give me, within 120 days, his recommendations for increasing the access of drug abusers to them." President Jimmy Carter, Special Message to the Congress, August 2, 1977, *Office of Drug Abuse Policy, 1978 Annual Report*, 84; Washington, D.C., 1978.

In addition to these statements, the Federal government has incorporated in treatment program requirements recognition of the importance of

employment as an objective of treatment and rehabilitation. Of particular relevance the regulations adopted by the Food and Drug Administration and the National Institute on Drug Abuse establishing Program Standards for Methadone Maintenance and Detoxification, 21 C.F.R. Part 291, include, *inter alia*,

"§ 291.505 (6) (v) Vocational rehabilitation, education, and employment. (a) Each program shall provide opportunities directly, or through referral to community resources, for those patients who either desire or who have been deemed by the program staff ready to participate in educational job-training programs or to obtain gainful employment as soon as possible. Each program shall maintain a list of references that may be used for referral purposes if rehabilitative activities are not provided directly. The references shall include the opportunities for vocational training, education, and employment as well as the community resources that may be available to provide assistance for such activities."

It is not suggested by this public policy or in this brief that there is any duty of employers to assist in the rehabilitation of former heroin addicts. The Federal and State governments and treatment programs have undertaken that responsibility. All that is sought is removal of artificial barriers to employment of qualified persons so that the goals of treatment and rehabilitation may be realized.



### CONCLUSION

For the foregoing reasons this Court should affirm the judgment of the District Court, as modified and affirmed by the Court of Appeals, holding that the blanket exclusionary employment policy of the defendants - petitioners violates the due process and equal protection clauses of the Fourteenth Amendment.

Respectfully submitted,

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October 6, 1978